

# House File 2175 - Introduced

HOUSE FILE 2175

BY SALMON

## A BILL FOR

1 An Act relating to open communications related to adverse  
2 health care incidents, including the rights of patients,  
3 health care providers, and health care facilities.  
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 135P.3, subsection 1, unnumbered  
2 paragraph 1, Code 2022, is amended to read as follows:

3 If an adverse health care incident occurs in a health  
4 facility, the health care provider, the health facility, or  
5 the health care provider jointly with the health facility, may  
6 provide the patient with written notice of the desire of the  
7 health care provider, the health facility, or of the health  
8 care provider jointly with the health facility, to enter into  
9 an open discussion under this chapter. A health facility may  
10 designate a person or class of persons who have authority to  
11 provide such notice on behalf of the facility. If the health  
12 care provider or health facility provides such notice, such  
13 notice must be sent within one year after the date on which  
14 the health care provider knew, or through the use of diligence  
15 should have known, of the adverse health care incident;  
16 however, this one-year requirement may be waived by the patient  
17 if done so in writing by the patient or the patient's legal  
18 representative. The notice must include all of the following:

19 Sec. 2. NEW SECTION. 135P.5 Demand for policy limits —  
20 prima facie evidence of bad faith.

21 1. If a health care provider or health facility makes an  
22 offer of compensation under section 135P.3, subsection 3,  
23 paragraph "d", subparagraph (2), the health care provider  
24 or health care facility shall provide the patient with the  
25 contents of any insurance agreement under which any person  
26 carrying on an insurance business may be liable to satisfy part  
27 or all of a judgment which may be entered in any civil action  
28 or to indemnify or reimburse for payments made to satisfy any  
29 judgment entered in any civil action filed by the patient  
30 against the health care provider or health facility, including  
31 a copy of any insurance declaration page showing the limits of  
32 insurance that may be available to the patient to satisfy any  
33 settlement or judgment relating to the patient's injuries and  
34 damages. The health care provider or health facility shall  
35 also include a copy of any declarations page providing primary

1 professional liability coverage as well as any applicable  
2 umbrella coverages.

3 2. If, at the end of the compensation discussion, the  
4 patient has made a demand for an amount that is less than or  
5 equal to the applicable policy limits, and the health care  
6 provider or health care facility consents in writing to the  
7 payment by the insurance carrier of the demand, then the  
8 insurance carrier identified in any insurance agreement or  
9 declarations page produced under subsection 1 shall respond in  
10 writing to the patient's demand within thirty days of receipt.  
11 If the insurance carrier refuses to pay the demand and the  
12 patient subsequently receives a verdict or judgment against  
13 the health care provider or health care facility in an amount  
14 exceeding the applicable policy limits, then notwithstanding  
15 section 135P.2, the patient's demand for an amount that was  
16 less than or equal to the applicable policy limits, the health  
17 care provider or health care facility's consent, and the  
18 insurance company's refusal to pay shall be discoverable and  
19 admissible in any subsequent action against the insurance  
20 company for bad faith.

21 3. If the requirements of subsections 1 and 2 have been  
22 met and if a bad-faith action is filed against an insurer  
23 for failure to pay a demand under subsection 2, then there  
24 shall be an irrebuttable presumption of bad faith against the  
25 insurer and in favor of the health care provider or health care  
26 facility. Any subsequent verdict amount entered against an  
27 insurance carrier for bad faith under this subsection shall not  
28 be used by the insurance carrier to increase premiums charged  
29 to the insured health care provider, the insured health care  
30 facility, or the health care industry as a whole.

31 Sec. 3. NEW SECTION. 135P.6 Inquiry for open discussions.

32 1. This chapter shall not prohibit a patient or a patient's  
33 representative from requesting that a health care provider  
34 consider the initiation of open discussions under section  
35 135P.3. If such an inquiry is received by a health care

1 provider and the health care provider has insurance coverage  
2 identifiable under section 135P.5, subsection 1, the health  
3 care provider may notify the insurance company of the inquiry.

4 2. Upon receipt of the notification of the inquiry, the  
5 insurance carrier shall appoint independent legal counsel to  
6 advise the health care provider or health facility regarding  
7 the health care provider's rights under this chapter. Legal  
8 counsel appointed under this subsection shall continue  
9 to represent the health care provider throughout any open  
10 discussions that may subsequently take place under this  
11 chapter.

12 3. Legal counsel appointed to represent the health care  
13 provider under this section shall not represent the health care  
14 provider in any subsequent litigation related to the patient  
15 who inquired about the potential for open discussions or any  
16 patient with whom open discussions were initiated under section  
17 135P.3.

18 4. A failure of an insurance company to comply with  
19 subsection 2 shall be an irrebuttable presumption of bad faith  
20 in any subsequent litigation between the health care provider  
21 and the insurance company.

22 EXPLANATION

23 The inclusion of this explanation does not constitute agreement with  
24 the explanation's substance by the members of the general assembly.

25 This bill relates to open communications related to adverse  
26 health care incidents, including the rights of patients, health  
27 care providers, and health care facilities.

28 Under Code chapter 135P, a health care provider, or a health  
29 care provider jointly with a health facility, may engage in  
30 an open, confidential discussion with a patient related to an  
31 adverse health care incident. Under current law, a health care  
32 provider or health care facility desiring to do so must provide  
33 notice within one year of the date of the adverse health care  
34 incident. The bill provides that the one-year limitation may  
35 be waived by the patient or patient's legal representative by

1 written consent.

2     The bill provides that if a health care provider or health  
3 facility makes an offer of compensation, the health care  
4 provider or health care facility shall provide the patient with  
5 the contents of any insurance agreement under which any person  
6 carrying on an insurance business may be liable to satisfy a  
7 judgment. If at the end of the discussion, the patient and  
8 health care provider or health care facility has reached an  
9 agreement for an amount equal to or less than that of the  
10 insurance policy, then the insurance carrier has 30 days to  
11 respond in writing to the agreed-upon demand. If the insurance  
12 carrier refuses to pay and the patient receives a subsequent  
13 verdict or judgment against the health care provider or health  
14 care facility that exceeds the policy limits than the health  
15 care provider or health care facility's consent and insurance  
16 carrier's refusal is discoverable and admissible in any  
17 subsequent action against the insurance company for bad faith.

18     The bill provides that if the discussion contents become  
19 discoverable, there shall be an irrebuttable presumption of  
20 bad faith against the insurer and in favor of the health care  
21 provider or health care facility. Any subsequent verdict  
22 amount against the insurer for bad faith cannot be used to  
23 increase the premium charged to the health care provider,  
24 health care facility, or health care industry as a whole.

25     The bill does not prohibit a patient or a patient's  
26 representative from requesting that a health care provider  
27 consider the initiation of open discussions. Upon such an  
28 inquiry, the health care provider may notify the insurance  
29 company of the inquiry. Upon receipt of the notification of  
30 the inquiry, the insurance carrier shall appoint independent  
31 legal counsel to advise the health care provider regarding  
32 the health care provider's rights under Code chapter 135P.  
33 A failure to appoint legal counsel shall be an irrebuttable  
34 presumption of bad faith in any subsequent litigation between  
35 the health care provider and the insurance company.